accident took place on September 24, 1952. His injuries were :—

(a) Fracture of right half of pelvis;
(b) Fracture of right medial malleolus;
(c) Chip fracture of head right fibula;
(d) Paralysis of right lateral popliteal nerve resulting in foot drop;

The paralysis of the muscles supplied by the anterior popliteal nerve is permanent.

There is a weakness of all movements of the right leg and wasting of the muscles of the thigh and calf. In addition there is no dorsiflexion movement of the right foot resulting from the paralysis of the anterior tibial nerve. This disability is permanent.

The respondent remained 3 months in hospital and continued to go there twice a week until the following June. He used crutches for about three months after leaving hospital. His present condition is, in the words of Dr. Wilson :—

"Examined plaintiff on 5th February. He had a dropped foot. Could not say then that it would be permanent. He has also a stiff right hip joint. I advised him to go on with his electrical treatment at the hospital.

"In August I saw him again. There was no improvement at all and I am of opinion that the injury is permanent. Plaintiff will never be able to walk properly up or down a slope. He will have to remove his support whenever, e.g. he has a bath or shower. He can it is true, drive a car now. He should not suffer any more pain.

"I should say that he has a permanent partial disability of his leg. The stiffness of his hip joint should have gone by now — nevertheless it has not. I don't know what this condition may be in say 20 years. It may get worse. He is only a young man. It is perhaps worse psychologically to have an amputated foot."

It is clear that he must have suffered considerable pain. I think that $5,000 would not be an excessive award for this element.

This second element is difficult to assess. The respondent was earning rather high wages by reason of being able to follow a skilled occupation. He has not been able to obtain such employment since his accident and though it is physically possible for him to drive a car it is probable that he will always have greater difficulty in obtaining employment than he would otherwise. He will probably earn less at the best of times and he is more likely to be unemployed during difficult times. Counsel for the appellants suggested that he should be treated as having lost about one-third of his earning capacity. This form of assessment on a percentage basis is never entirely satisfactory. In many occupations a very slight injury means a total and permanent loss of employment. A professional cricketer who loses a finger will probably become useless as a cricketer. A solicitor who lost both legs might not suffer loss of earnings at all. Generally when a person gains his livelihood by some kind of manual dexterity, and suffers an injury which diminishes that dexterity, it is usually necessary for him to take up some other occupation and it is notoriously difficult for a manual worker to change to any other form of occupation except the least skilled and the worst paid. If the respondent cannot get work as a lorry driver it is difficult to see what he could do. In the Court below the appellant suggested poultry farming. But that requires a great deal of knowledge and skill to be carried on with success. And it is highly doubtful whether he could be made into a successful poultry farmer. His injuries would almost certainly disqualify him for hard manual labour. It is speculative whether he could make a living as a shopkeeper even if given the capital to set himself as such. Even on the basis suggested by the appellant's counsel an award of $9,000 would be justified.

As regards the third item, the respondent is a young man of 23 years who has suffered permament injuries which will prevent him from indulging in any form of sport and even from walking properly. I do not think that $10,000 would be excessive for this element. While element (b) is related to probable earnings of the injured person, elements (a) and (c) are not so related and are I take it the same regardless of his financial position. Wages here are lower than in England and damages relative to loss of earnings will naturally be generally less here than in England. In these cases I do not think that any guidance can be drawn from other cases unless these are fully reported. A summary which does not give all the facts is of no value. Where damages are at large I think that it is impossible to fix a scale and undesirable to try to do so. An analogous problem arises with regard to sentences. Courts will not look at what was done in other cases when reviewing sentences. I think they are right.

Taking the present case as a whole I consider that the damages in the present case are on the high side. I might have given rather less myself but I do not consider that there is adequate ground for nterference by this Court.

Appeal dismissed.

Solicitors for the appellant: *Rodyk & Davidson.*
Solicitors for the respondent: *Hilborne & Murphy.*

SUCCESSORS OF MOINE COMTE & CO. LTD. v. EAST ASIATIC CO. LTD. & SINGAPORE HARBOUR BOARD.

[O. C. J. (Knight, J.) April 23, 1954]

[Singapore — Suit No. 1693 of 1954]

Carriage of Goods by sea — Claim for damages for breach of contract of carriage alternatively of Art.

3(2) of Hague Rules — Estoppels against carriers arising from delivery of clean Bill of Lading — Insufficient packing — Onus of proof of negligence causing damage — Whether carriers' liability absolute.

This was a claim for damages against a shipowner for breach of contract in or about the carriage of 500 coils of galvanised steel wire by sea from Antwerp to Singapore, alternatively for breach of Art. 3 (2) of the Hague Rules in that the shipowner did not properly and carefully keep carry and stow the said goods.

The facts were that the wire had been loaded on board the first defendants' ship Magdala at Antwerp on September 29, 1952 in unwrapped coils and the first defendants gave the shipper a Bill of Lading acknowledging receipt thereof in apparent good order and condition. Upon discharge of the wire into the godowns of the Singapore Harbour Board on the November 7, 1952 all the coils were found to be corroded with rust. Subsequent analysis showed the corrosion to be due to contact with sea water. The plaintiffs, who were holders for value of the Bill of Lading, alleged that the first defendants were estopped from denying that the goods were in good order and condition when loaded into the ship, or that they had any inherent or latent defects qualities or vices, or that they were insufficiently packed.

The first defendants relied upon the exceptions contained in Art. 4 (2) (m) (p) and (q) of the Hague Rules and said that the wire although received in apparent good order and condition contained inherent or latent vices and defects which had caused the corrosion. They also said the goods were insufficiently packed and relied on Art. 3 (2) (p). All the alleged estoppels were disputed. As to the burden of proof the first defendants contended that it was for the plaintiffs to prove negligence against them. If this was wrong and the burden of proof lay on the first defendants then they could avoid liability by proving that they were not negligent and that the damage fell within one of the exceptions contained in Art. 4 (2) of the Hague Rules and further by showing a reasonable alternative explanation for the damage.

The case against the second defendants was withdrawn before their defence was called upon.

Held: the first defendants were estopped from denying that the goods were in apparent good order and condition when loaded but not that there were inherent or latent vices or defects therein at that time; (2) the first defendants having accepted the wire in an unwrapped condition were estopped from denying that it was sufficiently packed; (3) the burden of proof lay upon the first defendants to show that they were not negligent in carrying and handling the cargo, but they had successfully discharged this onus: **Gosse Millard v. Canadian Government Merchant Marine Ltd.**(3) followed.

Held further: the first defendants having established a reasonable possible alternative explanation for the cause of the damage their liability was not absolute and they were entitled to succeed in this action.

Cases referred to:—

(1) *Silver v. Ocean Steamship Co.* (1930) 1 K.B. 416.

(2) *The Glendarroch* (1894) P. 226.

(3) *Gosse Millard v. Canadian Government Merchant Marine Ltd.* (1927) 2 K.B. 432.

(4) *Phillips & Co. (Smithfield) Ltd. v. Clan Line Steamers Ltd.* 76 Ll. L. Rep. 58.

(5) *Borthwick & Sons Ltd. v. New Zealand Shipping Co. Ltd.* 49 Ll. L. Rep. 19.

CLAIM FOR DAMAGES.

Dr. C. H. Withers-Payne for the plaintiffs.

F. R. N. H. Massey for the 1st defendants.

C. H. Smith for the 2nd defendants.

Cur. Adv. Vult.

Knight, J.: — In this suit the plaintiffs claim $6,190 from the defendants being the difference in value between 500 coils of galvanised wire in good condition and its actual value on delivery to them, when in a damaged condition, on 7th November 1952. The sum claimed includes $40 for survey fees.

The defendant Company, which is the local branch of the Company which owns the ship *S. S. Magdala,* admits the shipment of 500 coils of wire in Antwerp on board their ship on or about 29th September 1952, and admits further having agreed to carry the wire to Singapore subject to the terms and conditions set out in a bill of lading of that date. After the hearing began, the defendants made further admissions and it has now been established that at the time of delivery to the Singapore Harbour Board at the end of the voyage, the wire was in a rusty condition, which had been occasioned by its having come into contact at some stage, with salt water. The facts of this case thus, are simple; the manner in which the cargo came to be damaged is not in dispute — nor is the quantum of damages.

The plaintiffs base their case on two grounds (1) that the cargo was shipped on a clean bill of lading (which is admitted by the defendants) in which it was stated to have been shipped "in apparent good order and condition" and the defendants are thus estopped from seeking to prove its condition to have been otherwise and (2) that although unable to prove when, and in what circumstances, the wire came into contact with salt water, this must have happened between the dates of delivery and discharge and negligence by the shippers must be inferred under the doctrine of *res ipsa loquitur.* The defendants maintain that it was utterly impossible for the cargo to have come into contact with salt water whilst it was in their hands and although it was shipped on a clean bill of lading, the wire had an inherent defect in it when delivered to the ship and that defect could not have been ascertained by ordinary

visual examination. The defendants suggest that in all probability the wire was either immersed in salt water, or splashed with it, as it was being carried out by lighter to the *Magdala* (when she was being loaded in Antwerp) and that during the voyage to Singapore the salt water corroded the coils of wire which subsequently arrived in a rusty condition.

As to the estoppel contention it is admitted that a statement of fact was made and I have no doubt that although the plaintiffs paid for the shipping documents before they saw the bill of lading they or their agents in Paris relied upon it and consequently acted upon the representation contained in it, to their detriment. The defendants, in my opinion, are thus estopped from denying that the cargo was not in apparent good order and condition. Further as the *Magdala* accepted the cargo unwrapped before giving a clean bill of lading the defendants are similarly estopped from maintaining that it was insufficiently packed or protected. A much more difficult point arises, however, as to whether the defendants are estopped from pleading that there was an inherent defect, quality or vice in the goods i.e. claiming immunity under Article IV (2) (m) of the Rules of the Carriage of Goods by Sea Act 1924. This point arose in *Silver v. Ocean Steamship Co.*[1] and although it was not found necessary to decide it, Greer L.J. said (at page 432):—

"I doubt very much whether the statement "shipped in apparent good order and condition" has any reference to original defects of quality or type. The words seem to me to refer rather to acquired damage or defect in goods rather than to original defects of quality or type . . . . . I am inclined to think that the words are confined to deterioration or damage which has occurred to the quality and type delivered".

With all respect I agree with this opinion. Quite obviously it would be impossible for a ship's officer on receiving unwrapped cargo to give it more than a careful visual examination. If he had to test all such cargo for hidden defects he would need the qualifications of an analytical chemist and no ship would ever leave port. How can any ship's officer receiving unprotected cargo possibly know of the presence of salt water in, or on it, which, as here, would affect the quality or type of the cargo, unless it can be seen? Again, what test is it thought that the ship's officer in this case ought to have made when examining the cargo? A manual examination of thousands of yards of wire in 500 coils was manifestly absurd and a visual examination as a means of detecting the presence of salt water was quite useless. Further, if by any miracle he had found salt water, can it seriously be suggested that he should then have ascertained whether the water was fresh, salt or brackish and having reached his conclusion in this regard, whether it was deleterious to the cargo? As I see it, the words "apparent good order and condition" cannot possibly cover "inherent defect" or defect which is not apparent to careful visual examination and the representation in this bill of lading, therefore, does not suffice to estop the defendants from seeking to prove that such defect was present in the cargo when it was delivered to them.

The next point for decision is whether the burden of proving negligence lies on the plaintiffs or defendants. *The Glendarroch*[2] — a somewhat old case, decided before the Carriage of Goods by Sea Act was passed, was cited as authority for holding that the onus of proving negligence lay on the plaintiffs — which onus, of course, they could never succeed in discharging. I do not consider, however, in view of *Gosse Millard v. Canadian Government Merchant Marine Ltd.*[3] that this decision is binding. *Gosse Millard's case*[3] was ultimately affirmed in the House of Lords and in *Phillips & Co. (Smithfield) Ltd. v. Clan Line Steamers Ltd.*[4] Atkinson J. quoting the words of Roche J. in *Borthwick & Sons, Ltd. v. New Zealand Shipping Co. Ltd.*[5] said:—

"I propose to take the law applicable from a comparatively recent formulation of it in the case of **Gosse Millard v. Canadian Government Merchant Marine Ltd.**[3] . . . a judgment of Mr. Justice Wright as he then was, and to say that the law is that, the goods here having been received in apparent good order and condition and delivered not in such good order and condition, that is evidence of a breach of contract, and it is then for the defendants to show — the onus of proof resting upon them — that the result followed without any negligence or want of reasonable care on the part of themselves, the carriers".

In my opinion, this is established law and the onus of proving that they were not negligent in handling this cargo thus lies upon the defendants, who rely upon the evidence of three witnesses in their difficult task of endeavouring to prove a negative. These witnesses establish that *S. S. Magdala* is a new vessel which is efficiently managed and that the coils of wire, which were found to be damaged on discharge, had been stowed during the voyage in question in two wings on the lower tween deck, in between which, was stowed a large quantity of paper. Between the place where the wire and paper were stowed and the outside air were two steel decks, and all the witnesses maintain that neither by way of ventilation shaft, nor in any other manner, unless the ship was involved in an accident (which is not suggested) was it possible for salt water to reach the tween deck. There is the further point that the wire is said to have been stacked to a height of six feet and as all of it was rusty, it would seem to follow that the salt water, which corroded it must have been of some depth. Now can this possibly have occurred, say the defendants, when

it is remembered that not only was the nearby consignment of paper undamaged but not one single claim has been made in respect of damage to other cargo which was stowed in the same area and included such diverse items as bicycle parts, silk and cotton, all of which, if immersed in salt water, would be rapidly ruined?

Although parts of Mr. Peterson's evidence — unfortunately recorded *de bene esse* — were not very convincing, it is difficult to see what further evidence could have been called to prove that the defendant Company was not negligent and it only remains to be considered whether they may be deemed to have discharged their onus of proof or whether their liability is in effect, absolute because they cannot explain how the damage was occasioned. Part of the judgment of Atkinson J. in *Phillips case*[4], *supra* (at page 61) is in point:—

"It is not necessary for the defendants to establish exactly why and how the damage occurred, provided they can disprove negligence; but, of course, it is not easy to do that unless they can establish some reasonably possible alternative explanation. If the damage is entirely unexplained, it is difficult to see how the onus can be discharged."

The alternative explanation offered by the defendants to which I have referred above, is that the wire was loaded in Antwerp into large steel lighters, some of which were very heavily loaded. According to the Chief Officer indeed, certain of these lighters had only a foot, to a foot and a half, free board. He added that it was quite possible for cargo in these heavily loaded lighters to have come in contact with spray and that he had seen lighters being cleaned out with water which was half salt and half fresh. This evidence was uncontradicted — the plaintiffs having made no attempt to prove the condition of the cargo when delivered to the ship — and it is thus quite possible that the wire *was* damaged by contact with salt water either within the lighters or through spray from outside, when being carried by them to the *Magdala*. Once this possibility is accepted the rusting of the wire in the humid air as the vessel neared the tropics, would be a natural consequence.

In my opinion considering all the probabilities of the matter, the alternative put forward by the defendants is a far more likely solution to the problem as to how the wire came to be damaged than the suggestion that it came into contact with salt water whilst in the *Magdala's* hold, which is said to be completely watertight and in which, it must be remembered, no other article whatsoever was damaged. I hold therefore that the defendants have established a reasonably possible alternative explanation — indeed I would go further and say a more probable one, than the plaintiffs' contention that they have been guilty of negligence and as I have already found that as regards this part of the case the doctrine of estoppel does not apply, it must follow that their defence to the claim is a good one.

I have not overlooked the letter at page 27 of Exhibit AB — which should, of course, have been written "without prejudice" — but I do not consider that in it the defendants are making an implied admission of liability for the damage done to the cargo. No doubt the defendants (like anyone else would be) were anxious to avoid the expense and uncertainty of litigation — particularly when it is remembered that their most important witnesses were ship's officers, literally sailing the seven seas, whose presence in Singapore would be most difficult to arrange. Mr. Lommer clearly thought that a settlement on a 50% basis might prove advantageous to his Company and he may very well have been right. But I read no admission of negligence into this letter.

There will be judgment for the defendants and I shall hear argument as to costs.

Judgment for the defendants.

Solicitors — for the plaintiffs: *Drew & Napier;* for the 1st defendants: *Allen & Gledhill;* and for the 2nd defendants: *Donaldson & Burkinshaw.*

TAN YOOK SUAN v. REGINA.

[A. Cr. J. (Murray Aynsley, C.J.) May 5, 1954]

[Singapore — Magistrate's Appeal No. 6 of 1954]

Criminal Law — Evidence — Accomplice — Warning — Necessity for — Rule of law.

The appellant, a Housing Investigating Officer of the Singapore Improvement Trust, was charged with corruptly accepting the sum of $1,000 as an inducement to do an act in relation to his principal's affairs, an offence punishable under section 3 (a) of the Prevention of Corruption Ordinance 1937.

The case for the prosecution was briefly as follows:— Sometime in April 1953 Phua Hoon Sin (P.W. 8), Kwang Boon Pin (P.W. 10) and See Boon Tow (P.W. 11) entered into a partnership to carry on a hairdressing business at No. 10 Albert Street. See Boon Tow was the tenant of No. 10 Albert Street and carried on a textile business on the premises. Permission to change the nature of the business and to make structural alterations to 10 Albert Street had to be obtained from the Singapore Improvement Trust, the owners of the premises.

Phua Hoon Sin and Kwang Boon Pin enlisted the help of Seah Chin Kwang (D.W. 2) who introduced them to the appellant. The appellant assisted them to make the necessary application to the Singapore Improvement Trust and sometime in June saw a European officer of the Singapore Improvement Trust in connection with the plan for the structural alterations. In due course the application and the plan were approved by the Singapore Improvement Trust.

Phua Hoon Sin then approached the appellant to assist him to get the partnership registered with the Singapore Improvement Trust. Appellant promised to